

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on February 7, 2003 at 8 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. George Everett (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Michael Lange (R)  
Rep. Bruce Malcolm (R)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. John Parker (D)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Scott Sales (R)  
Rep. Ron Stoker (R)  
Rep. Bill Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Lisa Swanson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 478, 2/4/2003; HB 430, 2/4/2003  
Executive Action: HB 61; HB 478; HB 294

**HEARING ON HB 478**

**Sponsor:** REP. JIM PETERSON, HD 94, Buffalo

**Opening Statement by Sponsor:**

REP. PETERSON opened on HB 478, stating that this bill would amend Title 46 of the Criminal Code. He explained that it would allow a criminal sentence to include the suspension of a driver's license upon failure to comply with penalties, restrictions or conditions of the sentence. He explained that this bill would provide an additional toolbox for the judge.

***{Tape: 1; Side: A; Approx. Time Counter: 1 - 70}***

**Proponents' Testimony:**

Bill Price, Bozeman, supported HB 478.

Robert Throessel, Montana Magistrates Association, supported HB 478. He stated that as a deputy county attorney, in Justice of the Peace (JP) Court, he recognizes that some defendants know the system very well and manipulate it. He felt that the threat of losing their driver's license is a good tool for courts to use. He stated that the Magistrates of Montana are confident that this bill will be used selectively.

***{Tape: 1; Side: A; Approx. Time Counter: 71 - 172}***

Gary Olson, JP, Broadwater County, supported HB 478. He explained that driving is a privilege and that this bill would make defendants accountable.

***{Tape: 1; Side: A; Approx. Time Counter: 173 - 195}***

**Opponents' Testimony:** None

**Informational Testimony:**

Dean Roberts, Administrator, Department of Motor Vehicles Division (DMV), supported HB 478. He stated that the suspensions need to be properly documented.

**Questions from Committee Members and Responses:**

REP. RICE asked Mr. Olson about garnishing wages. Mr. Olson responded that he may consider garnishing wages but the suspension is easier and more economical for courts to utilize.

**REP. EVERETT** asked about the costs of reinstating a driver's license. **Mr. Peterson** responded that it costs \$25 at present to reinstate a driver's license. He explained that if the legislature increases the reinstatement to \$100, the fiscal note would be three times higher. **REP. FACEY** stated that this is a great bill and did not see the need for a sunset. **Mr. Peterson** responded that the sunset was not his idea but a suggestion to get the bill passed. He would prefer to not have a sunset in the bill.

**CHAIRMAN SHOCKLEY** asked Judge Olson whether suspending the driver's license was the quickest, easiest way. **Judge Olson** agreed that suspending the driver's license would work best.

*{Tape: 1; Side: A; Approx. Time Counter: 196 - 417}*

**Closing by Sponsor:**

**REP. PETERSON** closed on HB 478, stating this would be an effective additional tool for the courts to use. He stated that, in the long run, the rewards would far outweigh any additional expense.

*{Tape: 1; Side: A; Approx. Time Counter: 418 - 441}*

**HEARING ON HB 430**

**Sponsor:** **REP. CHRISTOPHER HARRIS, HD 30, Bozeman**

**Opening Statement by Sponsor:**

**REP. HARRIS** opened on HB 430, stating that this bill is an attempt to get hate crimes legislation right. He stated that hate crimes are a fact and why not recognize that they apply to all people, regardless of their status. He explained that by removing the status of the crime, everyone would be protected regardless of their gender, sexual orientation, or race. He stated this bill would make it easier to prosecute hate crimes because the prosecution would not have to show that the intimidation or harassment occurred because of the person's race, religion or gender. He felt that this bill is a better hate crime provision, easier to prove, applicable to everyone, and has tougher penalties.

*{Tape: 1; Side: A; Approx. Time Counter: 442 - 514}*

*{Tape: 1; Side: B; Approx. Time Counter: 1 - 7}*

**Proponents' Testimony:** None

**Opponents' Testimony:**

**Jill DeClancy, Eagle Forum, Helena,** opposed HB 430. She opposed the "Where as" clauses stating they add "sexual orientation." She stated this bill would place the burden of proof with the defense. She urged a do not pass.

**Harris Himes,** opposed HB 430, stating that this bill would bring division, not unity, to society. He felt the basis for this hate crimes legislation is flawed. He stated that, prior to this hearing, he asked REP. HARRIS to strike out all the "Where as" clauses. He stated REP. HARRIS has no intention of considering that. He felt that our present intimidation bill is good enough and that this legislation is not necessary. He read the intimidation statute which dealt with subjecting another person to physical harm, restraint or threats. He felt that Montana already has a strong intimidation statute on the books and, therefore, this bill is unnecessary. He emphasized that the current intimidation statute would subject the offender to 10 years and/or \$50,000.

**{Tape: 1; Side: B; Approx. Time Counter: 8 - 92}**

**Julie Millam, Executive Director, Montana Family Coalition, Helena,** opposed HB 430. She stated that this bill brings division, not unity, to society. She felt that this bill is just another attempt to legitimize homosexuality. She stated that hispanic civil rights groups want a Taco Bell ad, featuring a chiauaua named "Dinky" that says "Yo quiero Taco Bell!" to stop using the ad. She explained that the former Mayor of Clearwater, Gabrielle Cazerias, stated that this ad is demeaning and leads to a type of bashing against hispanics. She stated HB 430 is illogical and urged the Committee to take a stand against it.

**{Tape: 1; Side: B; Approx. Time Counter: 93 - 129}**

**Chris Jones, Missoula,** opposed HB 430, stating Montana already has this law in its intimidation statute. He felt that every crime is a hate crime.

**Travis McAdam, Montana Human Rights Network,** opposed HB 430. He stated that because this bill removes the status categories of hate crimes, it takes the teeth out of the current law. Hate crimes are message crimes to not only the individual victim but also to the class of people the victim represents. He felt that the good parts of the bill exist in the "where as" clause of the bill, and this part should be moved into the body of the bill. He disagreed with REP. HARRIS that hate crimes should not be difficult to prosecute. He stated that when there is a hate

crime committed, it should be addressed under the hate crimes statute.

***{Tape: 1; Side: B; Approx. Time Counter: 130 - 247}***

**Betty Whiting, Montana Association of Churches (Association)**, opposed HB 430. She felt there is malicious harassment in the world and that the Association has worked in this area. She believed that there needs to be clear data on how often these crimes occur. She stated that the prisons are overcrowded, yet the prison population continues to grow. She felt that restorative justice, regarding crimes against a community, helps the community, the victim and the offender to come together. She explained that in hate crimes, the offender and the victim do not usually know each other.

***{Tape: 1; Side: B; Approx. Time Counter: 248 - 317}***

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. LASZLOFFY** queried that with the intimidation statute, containing hefty penalties, why a victim would want the offender prosecuted under the hate crimes statute. **REP. HARRIS** responded that the crime of intimidation involves the offender trying to get the victim to do or not do something. This differs greatly from knocking someone's head in because you hate them. He emphasized that the intimidation statute is really a coercion statute, and the key element is that the offender tries to get you to do or not do something.

**REP. NEWMAN** asked **REP. HARRIS** why he wants to remove this from the Code. **REP. HARRIS** responded that this bill would cover more crimes involving malicious intimidation when you take out the status. **REP. PARKER** asked if a group of one political party trashed a sign of another political party, could they be charged with a felony. **REP. HARRIS** responded that they could be charged under this bill.

**Closing by Sponsor:**

**REP. HARRIS** closed on HB 430 stating that people have been attacked based on their status. He stated that race, creed, sexual orientation, political affiliation, gender, physical or mental disability are just some of the status categories. He stressed that the list could go on and on and therein lies the problem.

**EXECUTIVE ACTION ON HB 61**

**Motion/Vote:** REP. MALCOLM MOVED TO TAKE HB 61 OFF THE TABLE FOR AMENDING. Motion carried 12-4, by roll call vote with REPS. LANGE, LASZLOFFY, SALES, and SHOCKLEY voting no.

**Motion:** REP. MALCOLM moved that HB 61 DO PASS.

**Motion:** REP. MALCOLM moved that HB 61 BE AMENDED.

**Discussion:**

REP. MALCOLM stated that his conscience bothered him and he felt that the Committee made a wrong decision in tabling this bill. He gave the example of three girls who took a fourth girl to the emergency room. Instead of being heroines, they were treated as criminals. He felt that in America, you are innocent until you are proven guilty. REP. RICE supported REP. MALCOLM. She explained that where she lives, in a rural area, they depend on the kids to drive. She stated her son drove a friend home who had too much to drink. Although her son was not prosecuted, he was removed from the basketball team. She felt that kids helping kids is a good message. She supports the amendment. REP. FACEY stated he supports the amendment. He has taught 7th grade for 27 years. He explained that if the officer wants the kid to blow and they fail, then that is fair. He stated a kid should be treated fairly and this amendment would do that. REP. CLARK stated that he does not support the amendment. REP. NEWMAN stated that a youth who is not in control of drugs or alcohol but is merely present, cannot be prosecuted.

***{Tape: 2; Side: A; Approx. Time Counter: 1 - 159}***

**Vote:** Motion TO AMEND HB 61 failed 5-13, by roll call vote, with REPS. FACEY, RICE, GALLUS, HARRIS, and MALCOLM voting aye.

CHAIRMAN SHOCKLEY announced they were back on the bill.

**Discussion:**

REP. CLARK stated that this bill would enable kids to use. He stated he will resist the bill. REP. NOENNIG agreed with what REP. CLARK stated. REP. NEWMAN stated that he had a change of heart on this bill. Although he does not think they should enable youths to be designated drivers, the bill says that sole presence should not trigger an arrest. He stated this bill is consistent with current law and will not hamper law enforcement. REP. PARKER stated he cannot support young people being allowed

to go these events but that the ride home is an important consideration. He wanted to strike some language to create a window for youths to drive a friend home.

**Motion/Vote:** REP. PARKER moved that HB 61 BE AMENDED. Motion failed 8-10, by roll call vote, with REPS. NEWMAN, RICE, FACEY, GALLUS, PARKER, RASER, MALCOLM, and STOKER voting aye.

**CHAIRMAN SHOCKLEY** announced that the Parker amendment failed and the Committee was back on the bill.

*{Tape: 2; Side: A; Approx. Time Counter: 161 - 507}*

**Discussion:**

**REP. LASZLOFFY** stated this bill sends the wrong message to kids. He stated that adults can drink legally, whereas kids under 21 cannot. **REP. EVERETT** stated he originally voted "no" on this bill but feels it is a good bill. **REP. LANGE** stated he does not support this bill. He believes it sends the wrong message to parents; that if your kid gets drunk, another kid may drive him home. **CHAIRMAN SHOCKLEY** agreed with REP. NEWMAN that this bill does not change current law. **REP. SALES** stated that this bill is going down the wrong road and he urged the Committee to not pass it.

**Motion/Vote:** REP. MALCOLM moved that HB 61 DO PASS. Motion carried 10-8, by roll call vote, with REPS. CLARK, THOMAS, GUTSCHE, LANGE, LASZLOFFY, NOENNIG, PARKER, and SALES voting no.

*{Tape: 2; Side: B; Approx. Time Counter: 1 - 153}*

**EXECUTIVE ACTION ON HB 478**

**Motion:** REP. GALLUS moved that HB 478 DO PASS.

**Motion:** REP. GUTSCHE moved that HB 478 BE AMENDED.

**Vote:** Motion that HB 478 BE AMENDED carried unanimously by voice vote.

**Motion:** REP. GALLUS moved that HB 478 DO PASS AS AMENDED.

**Discussion:**

*{Tape: 2; Side: B; Approx. Time Counter: 154 - 203}*

The Committee discussed whether this bill is necessary since the court can already garnish wages. The Committee felt that this bill would be a good tool for the courts to use. **REP. GALLUS** felt this was a poor bill because shoplifting and driving are totally unrelated and the conditions should be related to the original crime. **REP. NOENNIG** stated that he would propose a conceptual amendment that allows an arrangement with the court to get a work permit.

**Motion/Vote:** **REP. NOENNIG** moved that HB 478 BE AMENDED. Motion carried unanimously by voice vote.

**Motion/Vote:** **REP. NOENNIG** moved that HB 478 DO PASS AS AMENDED. Motion carried 15-1 by voice vote, with **REP. GALLUS** voting no.

**EXECUTIVE ACTION ON HB 294**

**Motion:** **REP. FACEY** moved that HB 294 DO PASS.

**Motion:** **REP. RASER** moved that HB 294 BE AMENDED (Laszloffy amendment).

**Vote:** Motion that HB 294 BE AMENDED carried 13-5 by roll call vote, with REPS. FACEY, GALLUS, GUTSCHE, HARRIS, and LANGE voting no.

**Motion/Vote:** **REP. NEWMAN** moved that HB 294 BE AMENDED. Motion failed 8-10, by roll call vote, with REPS. CLARK, GALLUS, GUTSCHE, HARRIS, MALCOLM, NEWMAN, PARKER, and SHOCKLEY voting aye.

**Motion/Vote:** **REP. FACEY** moved that HB 294 BE AMENDED (Facey Amendment). Motion failed 2-16, by roll call vote, with REPS. FACEY and RASER voting aye.

*{Tape: 3; Side: A; Approx. Time Counter: 1 - 28}*

**Motion/Vote:** **REP. FACEY** moved that HB 294 BE TABLED. Motion carried 10-8, by roll call vote, with REPS. GUTSCHE, NEWMAN, PARKER, RASER, and SHOCKLEY voting no.



**ADJOURNMENT**

Adjournment: 12 P.M.

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REP. JIM SHOCKLEY, Chairman

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LISA SWANSON, Secretary

JS/LS

**EXHIBIT** (juh27aad)